

¹ 5 U.S.C. §§ 8101-8193.

FACTUAL HISTORY

On September 13, 2013 appellant, then a 55-year-old letter carrier, filed an occupational disease claim alleging that on September 10, 2013 she sustained stress and a panic attack when she was inappropriately called into a meeting by a supervisor and the union. She also noted that when she arrived at work the next day she became very upset and went to the emergency room. In an undated statement, appellant indicated that on September 10, 2013 she was called in for a predisciplinary meeting for being late after delivering mail. She stated that she had an accepted foot condition, and the meeting upset her, stating that she was constantly harassed. Appellant repeated that, when she returned to work on September 11, 2013, she became very upset regarding the “intention of giving a letter.”

David Mast, a health and resource manager at the employing establishment, indicated in a September 18, 2013 letter that the claim was being challenged. He stated that on September 10, 2013 appellant was called in for a predisciplinary discussion which he maintained was an administrative action. On September 19, 2013 Mr. Mast indicated that the alleged letter appellant referenced was a disciplinary action due to unsatisfactory job performance.

Dr. Timothy D. Hartman, Board-certified in emergency medicine, noted on September 12, 2013 that appellant was excused from work through September 15, 2013.²

On September 24, 2013 appellant indicated that she made a mistake with the dates, stating that the meeting with Supervisor Charisma Johnson and Ernie Phillips, a union steward, occurred on September 11, 2013 and that she became upset and went to the hospital on September 12, 2013.

In letters dated October 3, 2013, OWCP informed appellant of the type evidence needed to support her claim, including answers to specific questions and a narrative medical report supported by a medical explanation regarding the cause of a diagnosed emotional condition. The employing establishment was asked to provide a statement from a knowledgeable supervisor and information regarding accommodations for appellant’s feet.

On October 28, 2013 Mr. Mast indicated that Ms. Johnson had conducted a predisciplinary interview with appellant on September 10, 2013 and when appellant reported to work on September 12, 2013 she reported that she was sick and an ambulance was called. He advised that Ms. Johnson was aware of a restriction that appellant could not stand for a long period of time and could only work eight hours.

A hospital emergency department record dated October 12, 2013, signed by Bryan Harrell, a physician’s assistant, reported a history that appellant had become extremely upset and stressed due to being reprimanded at work the previous day. Mr. Harrell indicated that it was difficult to review her history due to persistent crying and stress reaction but that she was not in acute distress. He indicated that a psychiatry consultation was done. Mr. Harrell diagnosed acute anxiety stress reaction and depression. Lisa A. Courtot, a psychiatric nurse, performed a mental health evaluation. She noted appellant’s report that she was treated improperly at work,

² A partially completed virtually illegible Ohio workers’ compensation form was also submitted.

planned to file a grievance and Equal Employment Opportunity Commission (EEOC) claim, and was afraid to go to work. Ms. Courtot diagnosed adjustment disorder with mixed depression and anxiety, work stressors, and chronic foot pain. Appellant was discharged to home in stable condition.³

In reports dated September 16, 2013, Dr. Anna K. Dendy, a psychologist, noted a history that appellant had a panic attack after a meeting at work. She diagnosed panic disorder and anxiety disorder, not otherwise specified, noting that appellant experienced a very distressing interaction with her supervisor and then had a panic attack. Dr. Dendy recommended outpatient psychotherapy and advised that appellant could return to work on September 17, 2013.

In an undated statement, appellant repeated that on September 11, 2013 she was called in to a predisciplinary interview by Ms. Johnson regarding being late coming back from delivering mail. She reminded Ms. Johnson that she had foot restrictions on file, advised that the following day she had a panic attack at work due to the meeting the previous day, and was taken to the hospital. Appellant indicated that she was under the care of a psychologist and had filed an EEOC claim.

By decision dated November 7, 2013, OWCP denied the claim, finding that, as appellant had not established a compensable factor of employment, she failed to establish an emotional condition in the performance of duty. Appellant, through her attorney, timely requested a hearing. At the hearing held on May 12, 2014, appellant testified regarding the meeting and her reaction. She indicated that she had to wear orthotics to deliver mail because her feet hurt and that she was currently off work for a separate claim, accepted for frostbite.

A grievance form dated April 28, 2014 indicated that the remedy requested from management would be to treat appellant with dignity and respect, and if her performance needed to be addressed, it should not be done on the workroom floor. In an attached statement, appellant noted that she had a foot condition and maintained that she was treated with disrespect by Ms. Johnson when she had appellant attend a predisciplinary meeting on September 11, 2013 for returning late from the street. She also generally asserted that Ms. Johnson harassed her.

By decision dated July 17, 2014, an OWCP hearing representative found that the predisciplinary meeting occurred on or about September 10, 2013, but that the event would be considered an administrative function which, absent error and abuse, would not be compensable. She noted that there was no probative evidence to establish that the employing establishment committed error or abuse in handling this disciplinary matter and affirmed the November 7, 2013 decision.

LEGAL PRECEDENT

To establish her claim that she sustained an emotional condition in the performance of duty, appellant must submit the following: (1) medical evidence establishing that she has an emotional or stress-related disorder; (2) factual evidence identifying employment factors or

³ Mr. Harrell indicated that he was signing the report for Dr. Hartman and reported that appellant was also evaluated by Dr. Hartman who managed her care.

incidents alleged to have caused or contributed to her condition; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to her stress-related condition.⁴ If a claimant does implicate a factor of employment, OWCP should then determine whether the evidence of record substantiates that factor.⁵ When the matter asserted is a compensable factor of employment and the evidence of record establishes the truth of the matter asserted, OWCP must base its decision on an analysis of the medical evidence.⁶

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment. In the case of *Lillian Cutler*,⁷ the Board explained that there are distinctions as to the type of employment situations giving rise to a compensable emotional condition arising under FECA. There are situations where an injury or illness has some connection with the employment but nevertheless does not come within coverage under FECA.⁸ When an employee experiences emotional stress in carrying out his or her employment duties, and the medical evidence establishes that the disability resulted from an emotional reaction to such situation, the disability is generally regarded as due to an injury arising out of and in the course of employment. This is true when the employee's disability results from his or her emotional reaction to a special assignment or other requirement imposed by the employing establishment or by the nature of the work.⁹ Allegations alone by a claimant are insufficient to establish a factual basis for an emotional condition claim.¹⁰ Where the claimant alleges compensable factors of employment, he or she must substantiate such allegations with probative and reliable evidence.¹¹ Personal perceptions alone are insufficient to establish an employment-related emotional condition.¹²

Administrative and personnel matters, although generally related to the employee's employment, are administrative functions of the employer rather than the regular or specially assigned work duties of the employee and are not covered under FECA.¹³ Where the evidence demonstrates that the employing establishment either erred or acted abusively in discharging its

⁴ *Leslie C. Moore*, 52 ECAB 132 (2000).

⁵ *Dennis J. Balogh*, 52 ECAB 232 (2001).

⁶ *Id.*

⁷ 28 ECAB 125 (1976).

⁸ *See Robert W. Johns*, 51 ECAB 137 (1999).

⁹ *Lillian Cutler*, *supra* note 7.

¹⁰ *J.F.*, 59 ECAB 331 (2008).

¹¹ *M.D.*, 59 ECAB 211 (2007).

¹² *Roger Williams*, 52 ECAB 468 (2001).

¹³ *Charles D. Edwards*, 55 ECAB 258 (2004).

administrative or personnel responsibilities, such action will be considered a compensable employment factor.¹⁴

For harassment or discrimination to give rise to a compensable disability, there must be evidence introduced which establishes that the acts alleged or implicated by the employee did, in fact, occur. Unsubstantiated allegations of harassment or discrimination are not determinative of whether such harassment or discrimination occurred. A claimant must establish a factual basis for his or her allegations that the harassment occurred with probative and reliable evidence.¹⁵ With regard to emotional claims arising under FECA, the term “harassment” as applied by the Board is not the equivalent of “harassment” as defined or implemented by other agencies, such as the EEOC, which is charged with statutory authority to investigate and evaluate such matters in the workplace. Rather, in evaluating claims for workers’ compensation under FECA, the term “harassment” is synonymous, as generally defined, with a persistent disturbance, torment or persecution, *i.e.*, mistreatment by co-employees or workers. Mere perceptions and feelings of harassment will not support an award of compensation.¹⁶

ANALYSIS

Appellant has not alleged that her emotional condition was due to any of her employment duties. She alleged that a predisciplinary interview meeting held on either September 10 or 11, 2013 caused a panic attack and stress reaction on September 12, 2013 when she was taken to an emergency room. Appellant indicated that at the meeting Ms. Johnson counseled her because she had been returning late from delivering her route. She noted that she had an accepted foot condition, which was ignored.

The Board finds that the predisciplinary meeting pertains to an administrative action of the employer and, generally, such actions in administrative or personnel matters, unrelated to the employee’s regular or specially assigned work duties, do not fall within coverage of FECA.¹⁷ Absent evidence establishing error or abuse, a claimant’s disagreement or dislike of such a managerial action is not a compensable factor of employment.¹⁸ Appellant’s allegation that she was treated with disrespect at this meeting that should not have been held pertains to administrative functions. While she submitted a copy of a grievance she had filed dated April 28, 2014, this merely indicated that she had requested as relief that management would treat her with dignity and respect, and if her performance needed to be addressed, it should not be done on the workroom floor. Appellant submitted nothing to reflect the disposition of this grievance. Thus, there is nothing in the record to substantiate error or abuse regarding the predisciplinary meeting. As such, it is not compensable factors of employment.

¹⁴ *Kim Nguyen*, 53 ECAB 127 (2001).

¹⁵ *James E. Norris*, 52 ECAB 93 (2000).

¹⁶ *Beverly R. Jones*, 55 ECAB 411 (2004).

¹⁷ *J.C.*, 58 ECAB 594 (2007).

¹⁸ *Donney T. Drennon-Gala*, 56 ECAB 469 (2005).

Appellant also alleged that Ms. Johnson treated her disrespectfully. Generally, complaints about the manner in which a supervisor performs his or her duties or the manner in which a supervisor exercises his or her discretion fall, as a rule, outside the scope of coverage provided by FECA. This principle recognizes that a supervisor or manager in general must be allowed to perform his or her duties and employees will, at times, dislike the actions taken. Mere disagreement or dislike of a supervisory or managerial action will not be compensable, absent evidence of error or abuse.¹⁹ Here again, as the record contains no evidence that Ms. Johnson or any employing establishment supervisor or manager committed error or abuse in discharging management duties, this allegation is not compensable.²⁰

Regarding appellant's general contention that she was subjected to harassment, particularly by Ms. Johnson, mere perceptions of harassment or discrimination are not compensable under FECA,²¹ and unsubstantiated allegations of harassment or discrimination are not determinative of whether such harassment or discrimination occurred. A claimant must establish a factual basis for his or her allegations with probative and reliable evidence.²² As noted above, the grievance resolution submitted did not indicate that the employing establishment erred.²³ Appellant submitted nothing to show a persistent disturbance, torment or persecution, *i.e.*, mistreatment by employing establishment management.²⁴ She therefore did not establish a factual basis for her claim of harassment by probative and reliable evidence.²⁵

Finally, as appellant failed to establish a compensable employment factor, the Board need not address the medical evidence of record.²⁶

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant did not establish an emotional condition in the performance of duty.

¹⁹ *Id.*

²⁰ *See David C. Lindsey, Jr.*, 56 ECAB 263 (2005).

²¹ *James E. Norris*, *supra* note 15.

²² *Id.*

²³ *See W.B.*, Docket No. 12-1369 (issued May 1, 2013).

²⁴ *Beverly R. Jones*, *supra* note 16.

²⁵ *See Robert Breeden*, 57 ECAB 622 (2006).

²⁶ *Katherine A. Berg*, 54 ECAB 262 (2002).

ORDER

IT IS HEREBY ORDERED THAT the July 17, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 16, 2015
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board